IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2277 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAIJIBHAI SHANABHAI VAGHRI

Versus

GOKALDAS VRUJLAL SHAH

Appearance:

MR AJ PATEL for Petitioner

MR HARIN P RAVAL for Respondent No.1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 31/07/2002

ORAL JUDGEMENT

#. Short but important question of law arises in this petition is, "Whether the petitioner had remedy under Section 84 or 29 of the Tenancy Act" ?

#. The petitioner belongs to Scheduled Caste. He had filed an application in the Year 1975 before the Court of Mamlatdar and A.L.T., Anand stating that he was the tenant of the land in question. That Tenancy Case No.53 of 1975 filed by the petitioner under Section 70(b) read with Section 32(O) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Act") before the Court of Mamlatdar and A.L.T., Anand was decided in favour of the petitioner, by an order dated 21st June, 1978 and he was declared as tenant and deemed purchaser of the land under Section 32(O) of the Act.

#. The said order was challenged by the respondent landlord in appeal under Section 84 of the Act before the Deputy Collector (Appeals), Anand. It was dismissed on 3rd April, 1980 and the Deputy Collector (Appeals), Anand and the authority was directed to initiate the proceedings under Section 84 of the Act to evict the landlord, as submitted by the learned counsel for the petitioner.

The Revision Application was filed at the instance of the landlord before the Gujarat State Revenue Tribunal (for short the "Tribunal") and the same was dismissed by the Tribunal. Against which a writ petition i.e. Special Civil Application No.1803 of 1983 was filed by the landlord and the same was also dismissed by the learned single Judge of this Court on 24th July, 1991. The Review Application i.e. Misc. Civil Application No.1432 of 1991 filed in that writ petition was also dismissed on 23rd March, 1992 by the learned single Judge of this Court. The matter was carried right upto Hon'ble Supreme Court by way of S.L.P. by the landlord and the same also came to be dismissed. Thus, the first round of litigation between the parties came to an end with the dismissal of S.L.P. by the Hon'ble Supreme Court.

#. During the pendency of the aforesaid proceedings initiated by the tenant against the landlord, the Civil Suit was filed by the landlord against the tenant, wherein the Civil Court granted order of status-quo in favour of the landlord. It is the case of the petitioner - tenant that under the guise of status-quo order, he was dispossessed from the land in question by the landlord since 1975 and so far, the possession of the land in question has not been handed over to him, though succeeded right upto the Hon'ble Supreme Court.

#. It may be stated that though learned Mamlatdar and A.L.T. by his order dated 21st June, 1978 declared the

petitioner as tenant and deemed purchaser of the land under Section 32(O) of the Act, the petitioner filed an application under Section 84 of the Act for the first time on 20th February, 1993 before the Court of Deputy Collector, Anand, for handing over the possession of the land from the landlord. The same came to be dismissed by the learned Deputy Collector by his impugned judgment and order dated 31st July, 1993 [ANNEXURE-B]. It was challenged by the petitioner by way of Revision Application before the Tribunal, which was also dismissed by the learned Tribunal by its impugned judgment and order dated 13th March, 1995 [ANNEXURE-C], holding that the petitioner is not entitled to recover the possession of the suit land from the landlord under Section 84 of the Act and the petitioner had to file a suit under Section 29(1) of the Act for obtaining the possession of the land in question from the landlord. These impugned orders passed by the Deputy Collector as well as Tribunal are challenged in this writ petition by the petitioner under Articles 226 and 227 of the Constitution.

#. Mr.Patel, learned counsel for the petitioner tenant vehemently submitted that in the original proceedings No.53 of 1975 filed by the petitioner before the Court of learned Mamlatdar and A.L.T., Anand, the learned Mamlatdar and A.L.T. observed that the applicant was in possession of the land in question from 1971 to 1975 and the application under Section 70(b) of the Act was filed in the Year 1975, which goes to show that the landlord came in possession of the suit land only in 1975. On this premise, it is submitted that the proceedings under Section 84 of the Act would be maintainable and not under Section 29(1) of the Act, as held by the Hon'ble Supreme Court. However, Mr.H.P.Raval, learned counsel for the respondent landlord, has vehemently submitted that the petitioner was employed as a servant under "Nokarnama" by the landlord. Inspite of it, the learned Mamlatdar and A.L.T., Anand treated the petitioner as tenant. In any case, it is submitted by the learned counsel for the respondent landlord that the landlord was in possession of the land in question right from the beginning. Therefore, it cannot be said that he had entered the land unauthorizedly or wrongfully. It is, therefore, submitted that under the provision of Section 84 of the Act, the landlord cannot be evicted from the land in question. The only remedy available to the petitioner tenant was under Section 29(1) of the Tenancy Act and not under Section 84 of the Tenancy Act. Mr.Raval has, therefore, submitted that there is a period of limitation provided under Section 29 of the Act and the petitioner failed to apply within time under Section 29(1) of the

Act, therefore, after about 15 years from the declaration made by the Mamlatdar and A.L.T. in 1978, for the first time, he made an application under Section 84 of the Act in 1983 before the Deputy Collector, which was rightly dismissed by the Deputy Collector as well as by the Tribunal.

#. Mr.J.M.Patel, learned counsel for the petitioner has relied upon the judgments of this Court, in cases of [1] Vallabhbhai Nathanbhai v. Bai Jivi and others, reported in 10 GLR (1) 829, [2] Mohmadkhan v. Dadamiya, reported in 11 GLR 595 and [3] Ravjibhai v. Jagubhai, reported in 22 GLR 917, in support of his contention that the petitioner had remedy under Section 84 of the Act and not under Section 29(1) of the Act. Mr.Patel, learned counsel for the petitioner has also tried to rely upon the judgment of the Hon'ble Supreme Court, in the case of Rangnath Vishnu Mulluck and another v. Vithoba Rama Rahane and others, reported in (1999) 1 S.C.C. 69. As against that Mr.Raval, learned counsel for the respondent has placed reliance upon the earlier judgment of the Hon'ble Supreme Court, Vallabhbhai Nathanbhai v. Bai Jivi and others reported in 1969 GLR 829, which was considered by the Hon'ble Supreme Court in its latest judgment in the case of Rangnath Vishnu Mulluck and another v. Vithoba Rama Rahane and others reported in (1999) 1 S.C.C. 69. I have refrained myself from dealing with the aforesaid judgment of the Hon'ble Supreme Court as well as this Court. In case of Rangnath Vishnu Mulluck and another (Supra), the High Court held that the landlord was in unauthorized possession. That is not the case here. Both the Courts below concurrently found that the landlord never remained in unauthorized possession or wrongfully entered the land. It is not in dispute that at least from 1975 till today, the landlord remained in possession of the land in question. Once both the Courts below concurrently held that the landlord was neither in unauthorized nor wrongful possession of the land then this Court cannot interfere with such findings recorded by both the Courts below in its jurisdiction under Article 227 of the Constitution, the scope of which is very narrow and limited.

#. In view of the above, I am of the clear opinion that in this case, the petitioner - tenant had the remedy u/s.29 of the Tenancy Act and not u/s.84 of the Act, which he failed to avail it. Therefore, in my considered view both the courts below rightly rejected the application of the petitioner made u/s.84 of the Act.

#. In view of the aforesaid discussions, I do not find

any merit in this case, which fails and is hereby dismissed. Rule is discharged. No order as to costs.

[B. J. SHETHNA,J.]

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